

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of CA on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 09-00696 SBA	DATE FILED 02/17/2009	U.S. DISTRICT COURT U.S. District of Court, Northern District of CA
PLAINTIFF JUNIPER NETWORKS, INC		DEFENDANT PETER M. SHIPLEY
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,119,236		***PLEASE SEE COMPLAINT***
2 6,304,975		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Jessie Mosley	DATE February 24, 2009
-----------------------------	------------------------------------	---------------------------

ORIGINAL

1 IRELL & MANELLA LLP
Morgan Chu (70446) (mchu@irell.com)
2 Jonathan S. Kagan (166039) (jkagan@irell.com)
1800 Avenue of the Stars, Suite 900
3 Los Angeles, California 90067-4276
Telephone: (310) 277-1010
4 Facsimile: (310) 203-7199

5 David C. McPhie (231520) (dmcphie@irell.com)
840 Newport Center Drive, Suite 400
6 Newport Beach, California 92660-6324
Telephone: (949) 760-0991
7 Facsimile: (949) 760-5200

8 Attorneys for Plaintiff
Juniper Networks, Inc.
9

ORIGINAL FILED

FEB 17 2009

Richard W. Wiekling
Clerk, U.S. District Court
Northern District of California
San Jose

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

SBA

12
13 JUNIPER NETWORKS, INC., a
Delaware corporation,

14 Plaintiff,

15 vs.

16 PETER M. SHIPLEY, an individual,
17 Defendant.
18

C09 00696
Case No.

COMPLAINT FOR FALSE
PATENT MARKING (35 U.S.C.
§ 292)

DEMAND FOR JURY TRIAL

19
20
21 Plaintiff Juniper Networks, Inc. ("Juniper") alleges as follows:

22 STATEMENT OF THE CASE

23 1. This is a civil action for damages under 35 U.S.C. § 292, in which
24 Plaintiff Juniper brings this action on behalf of the United States of America.
25 Juniper also lays claim to fifty percent (50%) of the fine awarded pursuant to the
26 above-mentioned statute.

27 ///

28 ///

1 **PARTIES**

2 2. Plaintiff Juniper is a corporation duly organized and existing under the
3 laws of the State of Delaware, and has its principal place of business at 1194 N.
4 Mathilda Avenue, Sunnyvale, California 94089.

5 3. On information and belief, Defendant Peter M. Shipley is an individual
6 residing at 2341 Spaulding Avenue, Berkeley, California 94703.

7 **JURISDICTION**

8 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
9 1338(a) in that this is a civil action arising out of the patent laws of the United States
10 of America, specifically 35 U.S.C. § 292.

11 5. This Court has personal jurisdiction over the Defendant because he
12 resides in the State of California.

13 **VENUE**

14 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and
15 1400(b) because Mr. Shipley's violations of 35 U.S.C. § 292 originate from and
16 have occurred in part in the Northern District of California, and because Mr. Shipley
17 is domiciled in this District.

18 **INTRADISTRICT ASSIGNMENT**

19 7. Pursuant to Civil Local Rule 3-2(c), because this action is an
20 intellectual property action, it is properly assigned to any of the divisions in this
21 district.

22 **GENERAL ALLEGATIONS**

23 8. Juniper is a leading designer, developer, manufacturer, and seller of
24 computer networking products. Juniper's products include, among other things, a
25 variety of firewall products.

26 9. On information and belief, Mr. Shipley is a self-proclaimed computer
27 "hacker." Mr. Shipley promotes his "hacking" abilities and related projects and

28 ///

1 products on a website he maintains at the URL <http://www.dis.org> (the
2 "Website").

3 10. Mr. Shipley started maintaining the Website no later than 1995. At that
4 time, he had a network environment in his home that was connected to the Internet,
5 which he used to support the Website.

6 11. Mr. Shipley's Website was a continuous target for attack from others in
7 the hacker community. Accordingly, on information and belief, Mr. Shipley sought
8 an approach that would stop or deter hacker attacks on the Website.

9 12. In 1995 and 1996, Mr. Shipley claims to have conceived and developed
10 a technology known as a "Dynamic Firewall." This technology was allegedly
11 claimed as an invention in a series of patent applications filed on behalf of Mr.
12 Shipley before the United States Patent and Trademark Office ("PTO").

13 13. Mr. Shipley used his Dynamic Firewall in connection with the Website.
14 The Dynamic Firewall was allegedly operational and secured in Mr. Shipley's home
15 beginning in 1996.

16 14. On or before December 10, 1997, Mr. Shipley caused the following
17 marking to be displayed on the Website with the Dynamic Firewall:

18 **Dynamic Firewall [Dover, Cyber] *** Patent Pending *****

19 "Shields holding captain..."

20 "D.I.P.S.H.I.T" Dynamic IP Shield Technology A selfmodifying active
21 firewall/packet filter designed to act as a LAN auto-defense and offense
22 monitor/tool. This is a idea I came up with a few years ago.

23 **Status:** basic log file monitoring funtioning, now implementing core
24 rulesets

25 15. In 1999, a hard drive crash in a computer in Mr. Shipley's home
26 allegedly resulted in the destruction of the Dynamic Firewall. After this hard drive
27 crash, Mr. Shipley's Dynamic Firewall was no longer operational or functioning on
28 the Website, and Mr. Shipley made no successful attempt to restore or recreate the
Dynamic Firewall that had been functioning previously on the Website.

///

1 16. On information and belief, Mr. Shipley did not remove the "Patent
2 Pending" marking on the Website following the destruction of the Dynamic Firewall
3 in 1999, even though no embodiment of the alleged invention by Mr. Shipley was
4 operational on the Website at that time.

5 17. On September 12, 2000, U.S. Patent Nos. 6,119,236 was issued to Mr.
6 Shipley as a result of the patent applications filed on his behalf before the PTO.

7 18. On or before December 3, 2000, Mr. Shipley intentionally altered the
8 language of the marking on the Website as follows:

9 **Dynamic Firewall [Dover] *** Patent # 6,119,236 *****

10 "Shields holding captain..."

11 "D.I.P.S.H.I.T" Dynamic IP SHield Technology A selfmodifying active
12 firewall/packet filter designed to act as a LAN auto-defense and offense
13 monitor/tool. This is a idea I came up with a few years ago.

14 **Status:** functioning...

15 19. Mr. Shipley's altered marking falsely indicated that the Dynamic
16 Firewall allegedly covered by U.S. Pat. No. 6,119,236 was still "functioning" on the
17 Website.

18 20. On information and belief, at the time Mr. Shipley made this alteration
19 to the Website language, he knew that language to be false, and that no Dynamic
20 Firewall allegedly covered by U.S. Pat. No. 6,119,236 was in fact "functioning" on
21 the Website.

22 21. On October 16, 2001, U.S. Patent No. 6,304,975 was issued to Mr.
23 Shipley as a result of the patent applications filed on his behalf before the PTO.

24 22. On or before October 29, 2001, Mr. Shipley intentionally altered the
25 language of the marking on the Website as follows:

26 **Dynamic Firewall [Dover] *** Patent # 6,119,236 and 6,304,975 *****

27 "Shields holding captain..."

28 "D.I.P.S.H.I.T" Dynamic IP SHield Technology A selfmodifying active
firewall/packet filter designed to act as a LAN auto-defense and offense
monitor/tool. This is a idea I came up with a few years ago.

1 **Status:** functioning...

2 23. Mr. Shipley's altered marking falsely indicated that the Dynamic
3 Firewall allegedly covered by U.S. Pat. Nos. 6,119,236 and 6,304,975 was still
4 "functioning" on the Website.

5 24. On information and belief, at the time Mr. Shipley made this alteration
6 to the Website language, he knew that language to be false, and that no Dynamic
7 Firewall allegedly covered by U.S. Pat. No. 6,119,236 and 6,304,975 was in fact
8 "functioning" on the Website.

9 25. As of February 11, 2009, the Website continues to bear a marking
10 indicating that the Dynamic Firewall allegedly covered by U.S. Pat. Nos. 6,119,236
11 and 6,304,975 is still "functioning" on the Website.

12 26. On information and belief, the Dynamic Firewall is not currently
13 operating or functioning on the Website.

14 27. No embodiment of U.S. Pat. Nos. 6,119,236 and 6,304,975 created by
15 Mr. Shipley has been in existence since the hard drive containing the Dynamic
16 Firewall crashed in 1999.

17 **CAUSE OF ACTION**

18 **(False Marking under 35 U.S.C. § 292)**

19 28. Juniper restates, realleges and incorporates by reference the allegations
20 contained in paragraphs 1 through 27 of this Complaint as if fully set forth herein.

21 29. Mr. Shipley has, in connection with the Website, marked upon, affixed
22 to, or used in advertising, both in the past and presently, the words "Patent
23 Pending," "Patent # 6,119,236," "Patent # 6,119,236 and 6,304,975" and other
24 words or numbers importing that a product or service functioning on the Website
25 was and is patented.

26 30. The Website and any firewall or other security products or services
27 operating thereon are unpatented articles with respect to U.S. Pat. Nos. 6,119,236
28 and 6,304,975, and have been since 1999.

31. Mr. Shipley has known since 1999 that the Website and any firewall or other security products or services operating thereon are unpatented articles with respect to U.S. Pat. Nos. 6,119,236 and 6,304,975, and have been since 1999.

32. Upon information and belief, Mr. Shipley made and continues to make these false markings on the Website for the purpose of deceiving the public.

33. Mr. Shipley's false marking is published each time the portion of the Website bearing the marking is accessed by a user. Pursuant to 35 U.S.C. § 292(a), Defendant is liable for up to a \$500 fine for each such instance of false marking, including each time the false marking on the Website was or is transmitted for display by a web browser. On information and belief, the false marking has been published multiple times every day since 1999, resulting in a total fine of millions of dollars or more. The actual amount of the fine attributable to Defendant's false marking will be developed during discovery and proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Juniper prays for judgment as follows:

A. For an award of damages of \$500 for every false marking offense by Mr. Shipley (including each time the false marking on the Website has been transmitted for display by a web browser), with one-half of this damages award to Juniper and the other half to the United States;

B. For an injunction restraining and enjoining Mr. Shipley, his agents, servants, employees, officers and those persons acting in concert or participating with Mr. Shipley, from all false marking activity including publication of false markings contained on the Website;

///

///

///

///

1 C. For such other and further relief as this Court deems just and proper.

2 Dated: February 17, 2009

IRELL & MANELLA LLP

3
4
5 By: 
Jonathan S. Kagan

6 Morgan Chu
7 (mchu@irell.com)
8 Jonathan S. Kagan
9 (jkagan@irell.com)
10 IRELL & MANELLA LLP
11 1800 Avenue of the Stars, Suite 900
12 Los Angeles, CA 09967
13 (310) 277-1010
14 (310) 203-7199 (facsimile)

15 David C. McPhie
16 (dmcphie@irell.com)
17 IRELL & MANELLA LLP
18 840 Newport Center Drive, Suite 400
19 Newport Beach, CA 92660
20 (949) 760-0991
21 (949) 760-5200 (facsimile)

22 Attorneys for Plaintiff
23 JUNIPER NETWORKS, INC.
24
25
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Juniper Networks, Inc. hereby demands a trial by jury on all issues triable to a jury as a matter of right.

Dated: February 17, 2009

IRELL & MANELLA LLP

By: 
Jonathan S. Kagan
Attorneys for Plaintiff
Juniper Networks, Inc.